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9 Attorneys for Plaintiff
San Jose Police Officers' Association

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA

11 COUNTY OF SANTA CLARA

12
13 SAN JOSE POLICE OFFICERS'
ASSOCIATION,

14 Plaintiff,

15 v.

16 CITY OF SAN JOSE, BOARD OF
ADMINISTRATION FOR POLICE
17 AND FIRE DEPARTMENT
RETIREMENT PLAN OF CITY OF
18 SAN JOSE, and DOES 1-10,
inclusive,

19 Defendants.

No.

**DECLARATION OF DAMIAN BORTOLOTTI
IN SUPPORT OF SJPOA'S *EX PARTE*
APPLICATION FOR TEMPORARY
RESTRAINING ORDER AND ORDER TO
SHOW CAUSE REGARDING PRELIMINARY
INJUNCTION**

20 I, Damian Bortolotti, declare and say:

21 1. I am employed by the City of San Jose as a Police Sergeant and a
22 member of the SAN JOSE POLICE OFFICERS' ASSOCIATION ("SJPOA"). I have
23 worked as a Police Officer, and later a Police Sergeant for the City of San Jose since
24 1993. I currently serve as a member of the Board of Directors for the SJPOA and have
25 held that position since January 2012. As a result of my employment with the City of San
26 Jose, I am familiar with the facts in this matter, as well as those set forth in this
27 Declaration. If called upon as a witness, I could and would testify competently to these
28 facts.

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1 2. I submit this declaration in support of the SJPOA's *Ex Parte* Application
2 for Temporary Restraining Order and Order to Show Cause Regarding Preliminary
3 Injunction ("*Ex Parte* Application for TRO").

4 3. In July 2011, San Jose Police Officers agreed to a 10% pay cut that will
5 be in effect until at least June 2013. This pay cut is in addition to increases to employee
6 contributions for retirement benefits (including increases to employee-paid retirement and
7 retiree health care costs) that amount to an approximate additional 17% decrease to my
8 take-home pay.

9 4. I am informed that this voluntary pay cut, combined with increases to the
10 employee-paid retirement/retiree health care costs in recent years, have made San Jose's
11 police officers among the lowest paid police in the region taking into account total
12 compensation. We currently pay more into our retirement than any other police agency in
13 the region. Effective June 24, 2012, we are slated for an additional approximate 2%
14 decrease to take home pay which will put us even farther behind other law enforcement
15 agencies in the region.

16 5. The cumulative impact of the pay reduction along with the increases to
17 employee-paid retirement/retiree health care costs has forced many officers to take
18 positions with other police agencies in the region. I know several officers who have
19 already left the department and many more who are considering leaving should additional
20 decreases to pay and/or pension benefits occur.

21 6. I am married with two kids.

22 7. The prior pay reduction and increases to employee-paid retirement/retiree
23 health care costs have forced me to cut back on all non-essential spending in order to have
24 enough money each month to pay my family's living expenses. In order to pay my bills
25 for necessities, including our mortgage, I have been forced to work extra overtime but still
26 have been unable to save any extra money for emergencies.

27 8. Measure B, if implemented, would require that I and other San Jose
28 police officers begin paying 50% of the costs of retiree healthcare, including both the

1 normal cost and unfunded liability. Currently, the unfunded liability percentage is 32%
2 which means that my salary immediately will be decreased by at least another 9% for the
3 unfunded retiree health care costs (because we already paying 7% of the unfunded retiree
4 health care costs) although I will receive the same level of benefits from the City. If this
5 occurs, it will be extremely difficult, if not impossible, to keep up with my family's basic
6 living expenses.

7 9. I have also been informed that the City will start charging me for 50% of
8 the unfunded pension liability (also currently set at 32%) although the implementation of
9 the unfunded pension liability charges will be phased in over time. The implementation
10 of this additional decrease will make my financial situation even more precarious.

11 10. Measure B will also modify disability retirement for San Jose police
12 officers, as detailed below, such that it will no longer be of any benefit to me. I consider
13 comprehensive disability retirement protection an absolutely crucial employment benefit
14 for my line of work because police work is extremely physically demanding and
15 dangerous. I know first hand how dangerous police work is because I have sustained
16 numerous on-the-job injuries throughout my career including knee injuries that have
17 required surgery to both knees, a shoulder injury, and a neck injury. I would not have
18 chosen a career in law enforcement without the knowledge that my family's financial
19 security would be protected in the event that I am disabled as a result of actions taken in
20 the line of duty while performing my job protecting the citizens of San Jose.

21 11. Under the City of San Jose's current disability retirement plan for police
22 officers, I would be deemed disabled if I am no longer able to perform duties within my
23 peace officer classification (i.e. the normal duties of a police officer). Under the current
24 system, if I was rendered disabled, I would be entitled to retirement disability payments of
25 50% of my current salary for the first 20 years of service and an additional 4% for every
26 year of service thereafter. The City explained these rights to me many times throughout
27 my career, starting in the Police Academy, and I have counted on these rights throughout
28 my career to protect my family's financial security should I be injured in the line of duty.

1 12. Measure B, if passed by San Jose electorate, would eviscerate the police
2 disability retirement plan. My understanding is that instead of analyzing whether I will be
3 able to perform police officer functions, the City will analyze whether I can perform the
4 essential job functions of any position within the Police Department, including jobs that
5 consist primarily of administrative tasks. If I am found to be physically able to perform
6 the essential job functions of any position within the Police Department, my disability
7 application will be denied. More troubling, if the job or jobs that I have been found to be
8 able to perform are occupied, I will be terminated from city employment without any
9 retirement benefits. The non-police jobs in the department are Alarm Technician (1
10 positions), Crime Prevention Specialist (5 positions), Latent Fingerprint Examiner (5
11 positions), and Police Artist (1 position). I do not recall when any of these positions was
12 vacant for any significant period of time.

13 13. If the changes delineated in the prior paragraph are implemented, it will
14 have an immediate and catastrophic impact on me and my family if I become disabled as a
15 result of actions taken in the line of duty, as it will almost certainly eliminates the
16 availability of any retirement pension. Essentially, the changes have all but guaranteed
17 that I will be terminated and left without the means to support myself and my family as a
18 result of being injured in the line of duty.

19 14. In light of this risk, if Measure B passes, I and (I am informed) many of
20 my colleagues will look for law enforcement work at departments that maintain full
21 disability retirement coverage, rather than risk being hung out to dry during such a time of
22 need. Moreover, I will no longer volunteer for high-risk assignments as I have done in the
23 past, and I believe I will have a difficult time recruiting officers to take high risk
24 assignments. In fact, I believe the San Jose Police Department will find it difficult, if not
25 impossible, to find enough officers, not only to fill these crucial roles, but also to simply
26 maintain an adequate force to fulfill its public-safety and crime-prevention roles.

1 I declare under penalty of perjury under the laws of the State of California that
2 the foregoing is true and correct and that this declaration is executed this 30 day of
3 May, 2012, SAN JOSE, California.

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6 Damian Bortolotti